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August 14, 2019

**VIA CM/ECF**

The Honorable Lorna G. Schofield  
United States District Court for the  
Southern District of New York  
500 Pearl Street, Room 640  
New York, New York 10007

**Re: Kiss v. Clinton Green North, LLC, et al.  
Docket No. 17 Civ. 10029 (LGS)  
Clinton Green v. Merchants Mutual Ins. Co., et al.  
Docket No. 19 Civ. 3420 (LGS)  
Newman Myers Ref. No.: NABV 22303**

Dear Judge Schofield:

We represent Defendants/Third-Party Plaintiffs Clinton Green North, LLC, Dermot Clinton Green, LLC, and AvalonBay Communities, Inc. in the matter bearing Index No. 17 Civ. 10029 ("the Underlying Lawsuit") and Plaintiffs Clinton Green North, LLC, Dermot Clinton Green, LLC, and AvalonBay Communities, Inc. in the matter bearing Index No. 19 Civ. 3420 ("the Coverage Action").

Per the Court's request during the August 8<sup>th</sup> telephonic Case Management Conference, we polled counsel in the Underlying Lawsuit and the Coverage Action to ascertain their respective positions as to the merits of consolidating the DJ Coverage Action with the Underlying Lawsuit. I have heard from all counsel who unanimously concur that the two actions should **not** be consolidated. The bases for this position are three-fold. First, the Underlying Lawsuit sounds in tort and fact discovery has been completed. Second, the Coverage Action sounds in contract and fact discovery is in its infancy. Third, but most importantly, since the Underlying Lawsuit will be presented to a jury should it go to trial (unlike the Coverage Action, which will be heard by the Court), combining the two cases would result in a jury learning of the insurance coverage for the defendants in the Underlying Lawsuit, which would be improper and prejudicial to defendants.

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As we suggested to the Court in the August 8<sup>th</sup> call, should it agree that the Underlying Lawsuit and the Coverage Action should not be consolidated, we respectfully submit that there is no need for counsel for defendants in the Coverage Action to appear at the August 29<sup>th</sup> Conference with the Court, which will be used to discuss expert discovery scheduling and address the Court's questions regarding Judy Painting's and Z & Z's Pre-Motion Letters in the Underlying Lawsuit.

Respectfully submitted,

NEWMAN MYERS KREINES GROSS HARRIS, P.C.



Timothy B. Parlin

TBP:ljl

cc:

**VIA CM/ECF**

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